

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JULES ANTHONY GHOLAR,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Respondents.

No. 2:20-cv-2457-KJM-DMC-P

ORDER

Petitioner, a state prisoner proceeding with retained counsel, brings this petition for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by Eastern District of California local rules.

On August 25, 2021, the Magistrate Judge filed findings and recommendations, which were served on the parties and which contained notice that the parties may file objections within the time specified therein. No objections to the findings and recommendations have been filed.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Robbins v. Carey*, 481 F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the magistrate judge are reviewed de novo by both the district court and [the appellate] court . . .”). Having reviewed the file, the court finds the correct the findings and

1 recommendation set forth in Section II(A) of the findings and recommendations, specifically, that
2 the petition before the court is a second or successive petition within the meaning of 28 U.S.C.
3 § 2244(b), that petitioner has not obtained the necessary authorization from the court of appeals
4 required to proceed with the current petition, and that this court therefore lacks jurisdiction over
5 the petition, ECF No. 15 at 3-4. *See, e.g., Cooper v. Calderon*, 274 F.3d 1270, 1274-1275 (9th
6 Cir. 2001). Given the absence of jurisdiction, the court makes no ruling with respect to sections
7 II(B) or II(C) of the findings and recommendations.

8 Pursuant to Rule 11(a) of the Federal Rules Governing Section 2254 Cases, the
9 Court has considered whether to issue a certificate of appealability. Before Petitioner can appeal
10 this decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c); Fed. R. App. P.
11 22(b). Where, as here, the petition is dismissed on procedural grounds, a certificate of
12 appealability “should issue if the prisoner can show: (1) ‘that jurists of reason would find it
13 debatable whether the district court was correct in its procedural ruling’; and (2) ‘that jurists of
14 reason would find it debatable whether the petition states a valid claim of the denial of a
15 constitutional right.’” *Morris v. Woodford*, 229 F.3d 775, 780 (9th Cir. 2000) (quoting *Slack v.*
16 *McDaniel*, 529 U.S. 473, 120 S. Ct. 1595, 1604 (2000)). For the reasons set forth in the section I
17 of the magistrate judge’s findings and recommendations, the court finds that issuance of a
18 certificate of appealability is not warranted in this case.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The court adopts in full the findings and recommendations filed August 25,
21 2021 at pages 1 through 4:13 and declines to adopt the remainder of the August 25, 2021 findings
22 and recommendations;
- 23 2. Respondents’ motion to dismiss, ECF No. 9, is granted to the extent
24 consistent with this order;
- 25 3. The Court declines to issue a certificate of appealability; and
- 26 4. The Clerk of the Court is directed to enter judgment and close this file.

27 DATED: May 23, 2022

28 
CHIEF UNITED STATES DISTRICT JUDGE